IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.2490 OF 1991

1. Shri Krishnaji Jayram Thakur,
since deceased by his heirs:
a) Shri Anil Krishnaji Thakur & ors. Petitioners

Vs

1. Shri Dattatraya Govind Jadhav
and Anr. .. Respondents

Shri Sadanand S.Pandit, for the petitioners.

Shri Anil L. Desai, for respondent no.1.

CORAM : D.B.BHOSALE,J.

DATE : 7th December, 2004.

ORAL ORDER;

1. By means of this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the judgment and order dated 18.1.1991 passed by the Maharashtra Revenue Tribunal, (for short, "MRT") in Revision Application No.Ten.A.8 of 1990. By that order the revision application was allowed and the orders passed by the authorities below were set aside and the matter was remanded to the Tahasildar for fresh enquiry under section 32R read with sections 43 and 84B of the Bombay Tenancy And Agricultural Lands Act,1948 (for

short, "the Act").

2. To state in brief, the petitioners are the purchasers of the land bearing survey no.238-A-1-A1, Hissa No.18-A, admeasuring 3 Hectors 12 Ares, situate at Jamsande Taluka Davgad (for short,"suit land"). The survey No.238-A-1-A1 was, originally, admeasuring 10 Acres and some odd Gunthas. The petitioners claim that they purchased the suit land on 3.1.1970 by a registered sale deed from the original owner Sakharam Gore. In 1960, Sakharam Gore had filed Tenancy Application No.77 of 1960 against the father of respondent no.1 seeking negative declaration under section 70(b) of the Act that the respondent was not a tenant in the suit land. That application was allowed by the Tenancy Awal Karkun, vide dated 31.10.1961, declaring that the father of the respondent was not a tenant in the suit land. In 1962, the father of respondent no.1 died. In the very year, Sakharam Gore filed Regular Civil Suit No.23 of 1962 seeking injunction against the tenant restraining him from disturbing his peaceful possession over the suit land. In 1963, respondent no.1 preferred Tenancy Appeal No.142 of 1963 against the order of the Tenancy Awal Karkun dated 31.10.1961. The District Deputy Collector, Ratnagiri, allowed the appeal filed by respondent no.1 against which the petitioners preferred Tenancy Appeal

No.1194 of 1963 before the MRT. In those proceedings, the parties arrived at compromise in which Sakharam Gore agreed for respondent no.1 being declared as tenant-purchaser in respect of 2 Acres 13 Gunthas in survey no.238-A-1-A1 as per the map that was annexed to the said compromise deed, free of charge and in addition thereto to pay Rs.400/- to him. On 12.1.1965, the President, MRT passed an order in terms of the compromise terms. As provided in the terms of the compromise, the consent order was obtained in Civil Suit No.23 of 1962 and the decree to that effect was also passed by the learned Civil Judge, Jr Dn., Deogad on 12.7.1965. Thereafter in January, 1970, the petitioners purchased the suit land which was retained by Sakharam Gore under a registered sale deed from him. The petitioners claim that the said purchase was done after obtaining necessary permissions as required under the provisions of the Act.

2.1 In 1984, respondent no.1 filed an application under section 70(b) afresh seeking declaration that he is a tenant in the land which was retained by Gore in the compromise and which was sold to the petitioners. The Tahasildar dismissed the application by his order dated 31.5.1986 holding that the respondent no.1 was not a

tenant in the suit land. Even the appeal filed by respondent no.1 before the Sub Divisional Officer was also dismissed by order dated 12.7.1989. The respondent no.1 thereafter preferred the revision before MRT in which the order impugned in the instant writ petition came to be passed.

3. I heard the learned counsel appearing for the parties, perused the orders passed by the tenancy authorities below as also the other material placed before me. It is clear from the judgment of the MRT that though the revision was allowed and matter was remanded for holding an enquiry under section 32R, 43 and 84B of the Act, the MRT has affirmed the findings recorded by the authorities below in so far as the claim of respondent no.1 that he was a tenant in the suit land which was retained by Gore in the compromise is concerned. It was held that the respondent was not a tenant in the suit land. The MRT, however, suo motto, without there being an objection raised by respondent no.1, held that the petitioners purchased the suit land from Gore without obtaining previous permission of the Collector. It was further held that the original landlord Sakharam Gore, after obtaining possession of the suit land in pursuance of the compromise, failed to

cultivate it personally and therefore an action under section 32R read with section 43 of the Act was required and remanded the matter for holding such enquiry.

4. I am at a loss to understand as to how the MRT could entertain the revision application filed by respondent no.1 against the order passed by the Sub Divisional Officer dated 12.7.1989 and also in the face of the order passed by the President, MRT in 1964 in terms of the compromise. Admittedly the order dated 17.12.1964 passed by the President, MRT in terms of the compromise was not carried further by respondent no.1, nor did he challenge the judgment and decree dated 12.7.1965 passed in the civil suit in terms of the compromise. Moreover, the order of the Sub Divisional Officer dated 12.7.1989 was not passed on merits. As a matter of fact, respondent no.1 had withdrawn the appeal and by that order the appeal was dismissed as withdrawn. Keeping that in view, the MRT ought not to have entertained and allowed the revision. It is very pertinent to notice that the MRT confirmed all the findings of fact recorded by the authorities below holding that the revision cannot be entertained against the findings of fact. Therefore, in my opinion, the MRT has committed manifest error of law in entertaining the Revision in the face of

the earlier order passed by the MRT in 1965 in terms of the compromise and entering into a controversy which was neither raised in the revision nor was argued before the MRT, holding that the petitioners purchased the suit land from respondent no.1 without obtaining previous permission from the Collector, as required under the provisions of the Act. It ought not to have entered into this question since that was not an issue before the MRT which was dealing with the revision arising out of the application filed by respondent no.1 under section 70(b). There was absolutely no reason why the MRT had to enter into a controversy whether the purchase of the land by the petitioners was in consonance with the provisions of the Act. While exercising supervisory jurisdiction under Article 227 of the Constitution, the High Court is not expected to convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct error of mere formal or technical character. Supervisory jurisdiction is normally exercised in the cases where error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and grave injustice or gross failure of justice has occasioned thereby. The instant case is one such case where gross failure of justice has

occasioned by the impugned order. In the circumstances, this petition is allowed. The order dated 18.1.1991 passed by the MRT is quashed and set aside. Rule made absolute. No order as to costs.

(D.B.Bhosale, J.)

HIGH COURT
CIVILI APPELLATE SIDE

WRIT PETITION NO.2490 OF 1991

Date of Judgment:

7th December, 2004

For approval and signature

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated

to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?